

1 Q Mr. Sobel, please turn to page three of WTB
2 Exhibit 39, paragraph III under "Maintenance Services to be
3 Provided." The first sentence of that paragraph says that
4 Mr. Kay shall be the sole supplier of all equipment and
5 labor needed to repair the Management Agreement stations.
6 Correct?

7 A Yes.

8 Q Is there anything in this agreement that says you
9 will be the person who will maintain and repair the
10 stations?

11 A It doesn't exclude it but, no, there is nothing
12 that says that.

13 Q Why didn't you insist that the agreement contain a
14 provision saying that you would be the person responsible
15 for maintaining and repairing the facilities?

16 A I didn't think it was necessary, since I was
17 already doing it. I didn't pay that much attention to it,
18 really.

19 Q Mr. Sobel, I turn your attention to page eight of
20 Exhibit 39, paragraph 20. Is it correct that this paragraph
21 says that, "This written agreement is the entire agreement
22 between the parties with respect to the subject matter
23 hereof, making void all previous negotiations and
24 agreements?"

25 A Yes, this is the legal mumbo jumbo that anybody

1 puts in their contracts.

2 Q But you understood that this was a legal binding
3 document you were signing. Correct?

4 A Well, sure.

5 Q Mr. Sobel, how often do you actually perform work
6 on the Management Agreement stations?

7 A When they need repair. I listen to them
8 occasionally. I program customers on them.

9 Q How often would it be necessary for you to repair
10 or maintain the equipment on the stations?

11 A Giving you a time frame is very difficult. It is
12 just a matter of when they break and when I need to do
13 something. If I have to give some sort of an answer, I
14 would say maybe several times a month for all of them
15 together.

16 Q Mr. Sobel, please turn to WTB Exhibit 25. These
17 documents are invoices you sent to Mr. Kay for work you had
18 done for Mr. Kay?

19 A Yes.

20 Q Turn to page four. Are these invoices you would
21 send to Lucky's Two-Way Radios?

22 A Yes.

23 Q Towards the top of the page, on the same level as
24 where it says, "Customers order," towards the right-hand
25 side, do you see there is a listing for date there?

1 A Yes.

2 Q There is a date filled in?

3 A Yes.

4 Q Would that be the date you normally sent the
5 invoice?

6 A Yes.

7 Q Below that, on the left-hand side, there is a
8 notation such as 11-5, 11-6. Do you see that?

9 A Yes.

10 Q That would normally be the date on which you
11 actually performed the work?

12 A Yes.

13 Q To the right of that, there is a notation which
14 would be the place you performed the work?

15 A Yes.

16 Q On several of these entries it says "shop." Would
17 that be a reference to Mr. Kay's shop?

18 A Yes.

19 Q There is a notation to the right of the place.
20 Would that notation be the number of hours you worked on
21 that job that particular day?

22 A Yes.

23 Q Below, at the bottom of the page, do you see a
24 notation which appears to be "30 hr." Do you see that?

25 A Yes.

1 Q Does that refer to the hourly rate at which Mr.
2 Kay pays you?

3 A Yes.

4 Q To the right of that, the 55. Is that the total
5 number of hours for which you are billing Mr. Kay?

6 A Yes.

7 Q The number to the right of that is the total
8 charge to Mr. Kay?

9 A Yes.

10 Q Your other invoices were prepared in a similar
11 format?

12 A Yes.

13 Q Generally speaking, you can't tell from these
14 invoices what work you have done on the Management Agreement
15 stations, and what work you did on one of Mr. Kay's
16 stations. Correct?

17 A No, it wasn't necessary.

18 Q Sometimes you learned of the need to work on one
19 of the Management Agreement stations simply in Mr. Kay's
20 office. Correct?

21 A Yes.

22 Q Sometimes you learn of the need to work on the
23 Management Agreement stations by monitoring the stations
24 yourself. Correct?

25 A Yes.

1 Q You monitor the stations yourself at least once a
2 month?

3 A Maybe.

4 Q Now, Mr. Kay has monitored the Management
5 Agreement stations also. Correct?

6 A Yes.

7 Q He currently monitors the stations rarely where he
8 used to do so more regularly until a couple of years ago?

9 A That's my belief, yes.

10 Q Does anybody else in Mr. Kay's office monitor the
11 Management Agreement stations?

12 A Only when one of his customers call in and say
13 that it doesn't work. Some of his employees there would
14 monitor the station to determine whether it works or not.
15 Or they will call me and I'll check it out.

16 Q Mr. Sobel, how do you learn when there is work for
17 you to do on one of Mr. Kay's stations?

18 A Either he would call me or one of his employees
19 would call me.

20 Q Do you monitor Mr. Kay's stations yourself?

21 A Sometimes.

22 Q How often would that happen?

23 A Probably about the same as I monitor my own. I
24 monitor the whole system.

25 Q Is it true with respect to most stations, whether

1 they are Management Agreement stations or one of Mr. Kay's
2 stations, these stations are generally located high up on
3 mountaintops. Correct?

4 A Yes.

5 Q In most cases, whether you were working on a
6 Management Agreement station or one of Mr. Kay's stations,
7 you have to drive through locked security gates to get to
8 transmitter sites?

9 A Yes.

10 Q The buildings within which the transmitter sites
11 are located are often locked?

12 A Yes.

13 Q Indeed, it is often true that the cabinets inside
14 the buildings which contain the equipment are locked?

15 A Yes.

16 Q For the Management Agreement stations, is it
17 correct that you have the keys you need to get to the
18 equipment in your personal possession?

19 A Yes.

20 Q Do you have the keys in your personal possession
21 to get to the equipment you work on for Mr. Kay?

22 A Yes.

23 Q Generally speaking, Mr. Sobel, for the Management
24 Agreement stations, the control points for these stations
25 are located at your car, home, or office, and at Mr. Kay's

1 shop. Correct?

2 A Yes.

3 Q Mr. Sobel, please turn to WTB Exhibit 39, page
4 two, paragraph I. Under this agreement, Mr. Kay is your
5 exclusive agent for selling service on the Management
6 Agreement stations. Correct?

7 A Yes.

8 Q When a customer receives service on the Management
9 Agreement stations, they sign a contract. Correct?

10 A Yes.

11 Q That contract is signed by the customer and James
12 Kay. Correct?

13 A It's his customer. IT's his contract.

14 Q Now, the Management Agreement stations have
15 several hundred customers. Correct?

16 A Yes.

17 Q You advertise for and recruit customers for your
18 450 megahertz stations. Correct?

19 A Yes.

20 Q Every once in a while, a customer comes to you
21 whose needs would be better served by being on an 800
22 megahertz system. Correct?

23 A Yes.

24 Q There are customers who you put either on the
25 Management Agreement stations or one of Mr. Kay's 800

1 megahertz stations in order to better serve those customers.

2 Correct?

3 A Of course.

4 Q But you have only placed a handful of people
5 yourself on the Management Agreement stations. Correct?

6 A Correct.

7 Q Turning to paragraph II of the agreement, Mr.
8 Sobel, Mr. Kay is responsible for billing the customers.
9 Correct?

10 A Yes.

11 Q He is responsible for collecting from customers?

12 A Yes.

13 Q Mr. Kay and his employees are responsible for
14 doing the bookkeeping relating to the Management Agreement
15 stations?

16 A Yes.

17 Q Mr. Kay and his employees make sure any
18 obligations that are incurred with respect to the Management
19 Agreement stations get paid?

20 A Yes.

21 Q Mr. Kay or his employees answer or respond to
22 customer inquiries?

23 A Yes.

24 Q Mr. Sobel, could you turn to paragraph 12 of the
25 agreement on page six? It is correct that Mr. Kay is

1 responsible for keeping and maintaining the station's
2 financial records. Correct?

3 A Yes.

4 Q You periodically monitor the revenue levels on the
5 Management Agreement stations. Correct?

6 A Yes.

7 Q You obtain that information from Mr. Kay's
8 computer. Correct?

9 A Yes.

10 Q Does anyone else monitor the revenue levels on the
11 Management Agreement stations?

12 A I don't know.

13 Q Are the records on Mr. Kay's computer for the
14 Management Agreement stations kept in the same format as the
15 records for Mr. Kay's own stations?

16 A Yes, but they usually are distinguishable.

17 Q The format is the same, but you can tell which
18 stations are which?

19 A Yes.

20 Q For the Management Agreement stations, these
21 records contain a listing of the revenue that comes in from
22 each customer?

23 A Yes.

24 Q When you check the revenue, do you manually add up
25 the revenue for each customer on the station so you can

1 figure how much revenue each station generates?

2 A They are grouped by sites and frequency, so I will
3 take the totals of that particular situation and add the
4 totals up.

5 Q I'm sorry, Mr. Sobel. I didn't hear the last part
6 of your answer.

7 A The computer tells me by site and frequency, and
8 if I have more than one customer, then I will see the
9 computer will generate the totals, so I will take that total
10 and add it to other things and come up with a total.

11 Q You reviewed the revenue levels on the Management
12 Agreement stations every few months or every six months.
13 Correct?

14 A Yes.

15 Q Mr. Sobel, please turn to page five, paragraph
16 eight of WTB Exhibit 39. How many contracts were entered
17 into with customers per month on the Management Agreement
18 stations in 1997?

19 A I don't know. I don't keep track of them that
20 way.

21 Q You review contracts with Management Agreement
22 station customers maybe once or twice a month. Correct?

23 A Yes.

24 Q I direct your attention to the sentence that
25 reads, "Licensee shall have the right to reject any such

1 contract within five days of presentation, however, such
2 rejection shall be reasonable and based on the mutual
3 interests of the parties." Do you see that?

4 A Yes.

5 Q There have been two or three occasions on which
6 you changed your rate that had been negotiated by Mr. Kay or
7 one of his representatives. Correct?

8 A Yes.

9 Q On one specific occasion you remember the contract
10 with Sun West Materials, where you and Mr. Kay had discussed
11 charging one rate, and you, in fact, charged them more?

12 A Yes.

13 Q Is it true that you review selections made by Mr.
14 Kay's salespeople as to which station a particular customer
15 is placed on?

16 A Yes, I have the ultimate control because I turn on
17 all their codes.

18 Q Well, you do this review both for Mr. Kay's
19 stations and the Management Agreement stations, correct?

20 A Yes, but I don't tell him what to do with his
21 stations.

22 Q When you performed this service, for either the
23 Management Agreement stations or Mr. Kay's stations, you
24 received an hourly fee from Mr. Kay?

25 A Yes.

1 Q Is it also true that sometimes Mr. Kay would
2 review the placement of a customer on one of Mr. Kay's
3 stations or the Management Agreement stations?

4 A I'm sorry, say that again.

5 Q It is also true that sometimes Mr. Kay will review
6 the placement of the customer on one of Mr. Kay's stations
7 or the Management Agreement stations?

8 A That's correct.

9 Q You also activate and deactivate customers on the
10 Management Agreement stations. Correct?

11 A Yes.

12 Q You also do that on Mr. Kay's stations. Correct?

13 A Yes.

14 Q Would it be correct that you do the majority of
15 the activations and deactivations on Mr. Kay's stations?

16 A Yes.

17 Q Please describe the process of activating the
18 customer.

19 A Most of the stations are done by remote control
20 over the radio. We have a microphone with telephone type
21 buttons on it. The repeater has a computerized controller
22 on it, and there is a secret access code that only I have
23 and Jim has to activate the repeaters. Each customer is
24 assigned a specific code, which their radios are all
25 programmed to transmit, and that tells the repeater to go

1 ahead and repeat.

2 Q Is it correct that deactivating a customer is a
3 similar process?

4 A Yes.

5 Q Again, when you performed this work, either for
6 the Management Agreement stations or for one of Mr. Kay's
7 stations, you are paid an hourly fee by Mr. Kay for this
8 work?

9 A Yes.

10 Q Mr. Sobel, please turn to page four, paragraph
11 seven in WTB Exhibit 39. Please take a moment to read the
12 paragraph.

13 A Sorry, which paragraph?

14 Q Roman numeral seven. Labeled, "Option to
15 Purchase." It is correct that under this agreement, Mr.
16 Kay, at any time, can purchase any of the Management
17 Agreement stations for \$500.00 each. Correct?

18 A Yes.

19 Q How was the \$500.00 figure arrived at?

20 A I don't recall exactly. It was a long time ago,
21 but that's what we agreed to do.

22 Q This right is Mr. Kay's exclusive right. Correct?

23 A Yes, unless somebody else buys the agreement.

24 Q It is correct that you cannot sell any of the
25 Management Agreement stations to anyone else without his

1 approval. Correct?

2 A Correct.

3 Q Mr. Sobel, to your understanding, you believe
4 there are three stations that at one time were licensed to
5 you and managed by Mr. Kay, either pursuant to your oral
6 agreement or your written agreement, that were sold.
7 Correct?

8 A Yes.

9 Q At least one of those stations was sold to the
10 city of Los Angeles?

11 A No.

12 Q Or were sold to William Matteson?

13 A Yes.

14 Q Was that station sold for either \$70,000.00 or
15 \$90,000.00?

16 A I don't remember the exact amount, but that's what
17 I told you before.

18 Q That is what you testified to in your deposition.
19 Correct?

20 A Yes.

21 Q Of that amount, you received \$20,500.00 of that
22 money. Correct?

23 A Yes.

24 Q To your knowledge, James Kay received the rest of
25 that money?

1 A That was to pay for his expenses.

2 Q What year did you receive the \$20,500.00?

3 A I think it was '95, but I'm not sure. '95 or '96.

4 Q Of the \$20,500.00, was \$500.00 of that a fee paid
5 by Mr. Kay to you pursuant to the option clause of the
6 agreement?

7 A No.

8 Q You said that some of the money that went to Mr.
9 Kay in connection with the sale of the station was
10 reimbursement of expenses that Mr. Kay had?

11 A That's my understanding.

12 Q What sort of expenses?

13 A It costs a lot of money to clear the channel, to
14 buy other stations on the frequency, to cancel them, to move
15 radios, et cetera. I don't think he made that much money on
16 the whole deal. I made more than he did.

17 Q But it was Mr. Kay who incurred these expenses.
18 Correct?

19 A Yes.

20 Q How much money did you receive from the proceeds
21 of the sales of the other two stations?

22 A I received \$500.00 from one, and the other one was
23 a trade, so there was no money exchanged.

24 Q Do you know how much money was paid total for the
25 sale of the second station?

1 A No.

2 Q The second station which you received \$500.00 for,
3 was the \$500.00 an option fee paid by Mr. Kay?

4 A No.

5 Q You mentioned the third station, was that a trade
6 of one license for another license?

7 A Yes.

8 Q Did you receive the license in trade yourself, or
9 did Mr. Kay?

10 A I received a cancellation of one of my other
11 stations. It increased its value and I helped the other guy
12 increase his value on the other station.

13 Q Please turn to WTB Exhibit 39, page two, paragraph
14 one, letter paragraph A underneath that. Is it correct that
15 under this provision Mr. Kay has a sole and exclusive right
16 to negotiate contracts with customers?

17 A Yes. He was my reseller.

18 Q He has the legal right to determine what rates
19 would be charged customers. Correct?

20 A Not exactly.

21 Q But he has the sole and exclusive right to
22 negotiate these contracts. Correct?

23 A Yes, but my approval appears somewhere else in the
24 agreement that I have a right to review the contract and if
25 I'm not happy with it, I can withhold acceptance. At that

1 point, he can put them on someone else's station or his own
2 stations. This is a resale agreement.

3 Q For the Management Agreement stations, is it
4 correct that there is a standard break of \$12.00 a mobile
5 unit per month?

6 A Approximately, yes.

7 Q Is that the same standard rate charged to a
8 customer who is operating on one of Mr. Kay's 800 megahertz
9 stations?

10 A It's common in the industry, yes.

11 Q There are times when discounts are negotiated with
12 larger customers on the Management Agreement stations.
13 Correct?

14 A Yes.

15 Q Mr. Kay or his employees usually negotiate with
16 customers if negotiations are required?

17 A I do too, sometimes.

18 Q But, in fact, it is usually Mr. Kay or one of his
19 employees who handle the negotiations. Correct?

20 A Probably the majority, but not the great majority.
21 When it's a special deal, I know about it.

22 Q Maybe a handful of times a year, you might discuss
23 the rate with Mr. Kay or one of his employees?

24 A If that.

25 Q It is correct that the last rate change of the

1 standard rate on the Management Agreement stations was three
2 or four years ago?

3 A Approximately. The market changed a few years
4 ago. Competition became a little different, so we took a
5 look at it.

6 Q You don't recall whose idea it was to change that
7 rate, do you?

8 A No.

9 Q Now, you have no employees, correct?

10 A Correct.

11 Q You have never contemplated hiring any employees
12 to work on the Management Agreement stations, correct?

13 A It wasn't necessary.

14 Q You don't recall any incidents in which you hired
15 a contractor to do any work relating to the Management
16 Agreement stations. Correct?

17 A I may have. It has been a very long time I have
18 been doing this, but I don't recall any specifics.

19 Q Mr. Kay has employees who perform work relating to
20 the Management Agreement stations. Correct?

21 A Correct.

22 Q Mr. Kay is the person responsible for hiring,
23 firing, and overseeing those employees. Correct?

24 A Sure, they're his employees.

25 Q Mr. Sobel, please turn to page six of WTB Exhibit

1 39. Specifically, XIII, "Costs of Operation." Mr. Kay is
2 responsible for all of the expenses relating to the
3 Management Agreement stations. Correct?

4 A Yes. You asked that before.

5 Q On occasions, you buy parts yourself for the
6 Management Agreement stations. Correct?

7 A Yes.

8 Q You are normally reimbursed by Mr. Kay for that
9 expense. Correct?

10 A Yes.

11 Q Except for an instance where you may have missed
12 billing Mr. Kay for a part, is it correct that Mr. Kay has,
13 in fact, paid all the expenses relating to the Management
14 Agreement stations?

15 A Yes.

16 Q Now, except for the money you have received
17 working on the stations, the hourly fees you have received
18 from Mr. Kay, and the money you received in connection with
19 the sale of the stations, you have not received any money
20 from the Management Agreement stations. Correct?

21 A Not cash money, but paper money I have.

22 Q I'm sorry, paper money?

23 A The stations have a value, so in essence, I have
24 received something from them.

25 Q But other than the two instances you described,

1 you have not received any money in terms of cash or check.

2 A No.

3 Q Mr. Sobel, please turn to page four, paragraph
4 six. As the agreement reads, if any station grosses over
5 \$600.00 a month, all revenues over that amount are equally
6 split between the parties. Correct?

7 A Yes.

8 Q How many stations currently are subject to the
9 Management Agreement?

10 A Fifteen.

11 Q A few of the stations have exceeded \$600.00 a
12 month in revenue. Correct?

13 A Four of them.

14 Q But it is correct that the way you and Mr. Kay
15 have implemented the agreement, Mr. Kay gets to keep all the
16 revenue until the total revenue from all the stations
17 exceeds \$9,000.00 a month, i.e., \$600.00 times 15 stations.

18 A I look at the stations as a system of stations,
19 and that is correct.

20 Q The last time you looked, what was the total
21 revenue level of the Management Agreement stations?

22 A Somewhere between six and seven thousand dollars.

23 Q When did you last look?

24 A A few months ago.

25 Q Mr. Sobel, please turn to WTB Exhibit 26. This is

1 your Schedule C, Form 1040, filed on your behalf for 1996?

2 A Yes.

3 Q Do you see under part one, line seven, gross
4 income?

5 A Yes.

6 Q Does that figure reflect the gross income of your
7 business, AirWave Communication?

8 A No. The gross income is on line one. For tax
9 purposes, they call it gross income. They subtract the cost
10 of the items that I purchased.

11 Q So under line one, gross receipts or sales is what
12 you would consider to be gross revenues?

13 A Yes.

14 Q The document we have is a little cut off at the
15 edge. Would it be correct that the gross receipts or sales
16 would be \$192,78 -- and the last number is not visible?

17 A It is within \$10.00.

18 Q There is actually six figures in that number as
19 opposed to five, correct?

20 A Correct.

21 Q The same thing would be true for the figure under
22 gross income on line seven?

23 A Yes.

24 Q Turn to WTB Exhibit 28. This is your Schedule C,
25 Form 1040 for 1995?

1 A Yes.

2 Q Under part one, item one, gross receipts or sales
3 would be \$156,600 and something dollars?

4 A \$630 something dollars, yes.

5 Q Again, on line seven under gross income would be a
6 six figure number. Correct?

7 A Correct.

8 Q Turn to WTB Exhibit 31. Mr. Sobel, is this your
9 Schedule C, Form 1040 for 1994?

10 A Yes.

11 Q Again, under part one, item one, gross receipts or
12 sales would be \$169,120 something dollars?

13 A Yes.

14 Q Under item seven, gross income, would be \$109,180
15 something dollars?

16 A Yes.

17 Q Turn to WTB Exhibit 32. Is this your Schedule C,
18 Form 1040 for 1993?

19 A Yes.

20 Q Turning to WTB Exhibit 34, is this your Schedule
21 C, Form 1040 for 1992?

22 A Yes.

23 Q Finally, turn to WTB Exhibit 36. Is this your
24 Schedule C, Form 1040 for 1991?

25 A Yes.

1 Q Now, Mr. Sobel, please turn to WTB Exhibit 27.
2 That is a Form 1099 received by you from Lucky's Two-Way
3 Radios, James A. Kay, Jr.?

4 A Yes.

5 Q The 1099 reflects payments you received from James
6 Kay?

7 A Total payments, yes.

8 Q Now the amount on the 1099 was not verified by
9 you. Correct?

10 A Correct.

11 Q In 1996, you believed you received money from
12 Southland Communications. Correct?

13 A Yes.

14 Q Southland Communications is another name under
15 which James Kay does business?

16 A Yes.

17 Q You do not have a Form 1099 from Southland
18 Communications. Correct?

19 A I didn't find it when I went through my records.

20 Q But you believe that money was no more than a few
21 thousand dollars. Correct?

22 A Just equipment purchases. I don't make any money
23 off of it.

24 Q Is it your understanding that proceeds from
25 equipment purchases are reflected on these 1099s?

1 A No.

2 Q Do you know how much money you received from James
3 Kay in connection with the sale of equipment to him in 1996?

4 A A few thousand dollars. You said that earlier,
5 but it was through the company Southland Communications.

6 Q Would there be additional money you would receive
7 from the sale of equipment to Lucky's Two-Way Radio?

8 A I don't sell Lucky's Two-Way Radio equipment. If
9 I did, it would reflect on the invoices that you asked me
10 earlier.

11 Q But generally, when you sell equipment, you sell
12 it to Southland Communications?

13 A Correct.

14 Q How often do you sell equipment to Mr. Kay?

15 A Several times a month.

16 Q Mr. Sobel, turning to Exhibit 31, the 1994
17 schedules, is it correct you do not have in your records any
18 1099s from Lucky's or Southland or James Kay for that year?

19 A I looked. I didn't find any. A 1099 is not
20 important to me, and I don't have to file it with the
21 government, so I didn't necessarily save it.

22 Q Do you know or do you have an estimate of how much
23 money you received from Lucky's, Southland, or Mr. Kay in
24 1994?

25 A Based on my other years and offhand, I would say

1 it is no more than \$20,000.00, and probably no less than
2 \$10,000.00.

3 Q Is it correct, to the best of your knowledge, are
4 each of these Schedule Cs true and correct to the best of
5 your knowledge?

6 A I submitted it to the IRS. They better be
7 correct.

8 Q Mr. Sobel, please turn to WTB Exhibit 47.

9 JUDGE FRYSIAK: 47?

10 MR. SCHAUBLE: Exhibit 47, Your Honor.

11 BY MR. SCHAUBLE:

12 Q Turn to page six of the document, Mr. Sobel. Is
13 the first signature on that page your signature?

14 A Yes.

15 Q This is an agreement under which Mr. Kay would
16 purchase all your stations if you died. Correct?

17 A As protection for my family, yes. Provided my
18 wife would have the hassle of selling all my businesses.

19 Q The idea behind this agreement was to give your
20 family some security if you died. Correct?

21 A Of course.

22 Q Now, the date on this agreement is January 25,
23 1995. Do you see that? It is on page six.

24 A Yes.

25 Q In fact, you and Mr. Kay had discussed and agreed